

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**NO. 4:95CR00021-01 JLH**

**TERRELL DICKERSON**

**ORDER**

Pending is Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582(c) (Doc. No. 235). Defendant, who was sentenced for carjacking, use of a firearm during the commission of a crime, and felon in possession of a firearm,<sup>1</sup> asserts that his sentence should be reduced based on recent changes in the U.S. Sentencing Guidelines.

On November 1, 2007, the United States Sentencing Commission adopted Amendment 709, which amended § 4A1.2 -- the guideline addressing how misdemeanor and petty offenses are calculated when determining a defendant's criminal history score. Defendant asserts that his sentence should be modified under 18 U.S.C. § 3582(c)(2), based on this amendment.

Since Defendant was sentenced before November 1, 2007, Amendment 709 must be retroactive to apply in this case. Guideline § 1B1.10, titled Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement), lists all Guideline Amendments that are retroactive.<sup>2</sup> Since Amendment 709 is not listed in § 1B1.10(c), it is not retroactive and,

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<sup>1</sup> Doc. No. 129.

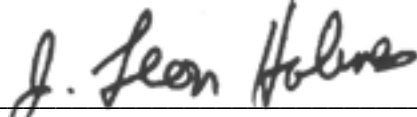
<sup>2</sup> U.S. SENTENCING GUIDELINES MANUAL § 1B1.10(c) (Supp. 2007) reads: "Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, and 706 as amended by 711." See also, *U.S. v. Cofield*, No. 07-4502, 2007 WL 4532938 (4th Cir. Dec. 26, 2007) (holding that Amendment 709 is not retroactive); *U.S. v. Godin*, 2008 WL 1006669 (1st Cir. April 10, 2008) (holding that Amendment 709 is not retroactive).

therefore, not applicable in this case.

**CONCLUSION**

Based on the findings of fact and conclusions of law above, Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582(c) (Doc. No. 235) is DENIED.

IT IS SO ORDERED this 23d day of April, 2008.

  
UNITED STATES DISTRICT JUDGE